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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  28118
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on <u>November 14, 2006</u>	Application Number  10 / 668 , 297	Filed  09 / 24 / 2003
Signature _____	First Named Inventor  Robert T. Cole	
Typed or printed name <u>Francie Uiker</u>	Art Unit  3761	Examiner  Jacqueline Stephens

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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November 14, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.



\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No.: 28118

### **REASONS FOR REVIEW REQUEST**

Sir/Madam:

This request is being filed in order to request a formal review of the legal and factual basis for the final rejection in the present application.

#### **Application Status:**

Claims 1, 2, 5, 6, 8-16, 18-22, 25, 27-31, 34, 35, and 37-45 are currently pending in this application, and have been finally rejected in an office action dated August 14, 2006. Claims 1, 14, 22, 30, 40, 42, 43 and 45 are independent claims.

No claims in the application have been allowed.

#### **Issue:**

Whether claims 1, 2, 5, 6, 8-16, 18-22, 25, 27-31, 34, 35, and 37-45 are obvious over Ronn et al. (U.S. patent No. 6,648,864). At issue, in particular, is the proper interpretation of the Ronn et al. reference as applied to the instant claims.

#### **Reference Disclosure:**

Ronn et al. discloses an array of disposable absorbent article configurations comprising a sequence of designs corresponding to the particular stage of development of the wearer. The reference essentially relates to a merchandising system which provides for the selection of an absorbent article based on a particular stage of development of the wearer. The system includes indicia exhibiting pictorial representations of the absorbent article configurations fitted to the wearer at corresponding stages of development, enabling a consumer to choose the appropriate absorbent article configuration for a particular wearer.

**Present Application:**

The pending claims of the present application are directed to visual identification devices for absorbent products (claims 1, 2, 5, 6, and 8-13), graphical representations for absorbent products (claims 14-16 and 18-21), methods of packaging absorbent products (claims 22, 25 and 27-29), packages of absorbent products (claims 30, 31, 34, 35, 37 and 38), and an absorbent product line (claims 39-45). A key feature of the present invention is a product that is tailored to the fit and absorbency needs of users, and a visual identification device that identifies absorbent products predicted to satisfy user fit and absorbency requirements. The identification device has product designations that identify absorbent products, size designations that relate to the sizes of the absorbent articles, and absorbency designations that relate to the absorbent properties of the absorbent articles.

**Arguments:**

Although the Examiner contends that Ronn et al. discloses a visual identification device for absorbent articles comprising two or more size designation and two or more product designations, the Examiner also acknowledges that Ronn et al. is silent regarding absorbency designations. The issue for resolution is (1) whether it would have been obvious that different sizes and stages of development require different absorbencies, and (2) that it would also be obvious to inform the consumer of this fact.

Applicant relies on the traditional legal basis for obviousness found in the MPEP and applicable legal precedent. The three criteria that must be met to establish a *prima facie* case of obviousness are: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. (See MPEP § 2143).

It is applicant's position that the Ronn et al. reference fails to teach or suggest a key element of the present invention, namely the use of absorbency designations in association with an absorbent article. This fact is acknowledged by the Examiner. However, the Examiner contends that one skilled in the art would be motivated to

correlate diaper size and absorbency in view of the fact that the reference correlates the stage of development with diaper size.

It is applicant's position that one skilled in the art, upon reviewing the reference disclosure, would conclude, at most, that absorbency characteristics are simply proportional to the size of the garment (and user). A bigger size absorbent article is provided with higher absorbency, and a smaller size absorbent article is provided with relatively lower absorbency characteristics. In view of this disclosure, it would not be obvious at all to make absorbent articles of the same size while having different absorbency characteristics, or to make different size articles of the same absorbency.

Applicant maintains that size and absorbency characteristics are two different elements or features of the absorbent article, and these two features are not directly proportional to each other in every instance as implied by the Examiner. For example, some users may require a small size absorbent article but at the same time desire to have higher absorbency needs, such as for feminine hygiene products used during menstrual periods which are relatively small in size but require a higher degree of absorbency. This is precisely why absorbency cannot always be directly linked to size.

The absorbent articles of the present invention are provided with different combinations of size and absorbency. The articles of this invention provide for products with the same size and absorbency characteristics. However, the present invention also provides that some articles with the same size characteristic may have different absorbency characteristics. Further, the present invention also provides that articles with the same absorbency may come in different sizes. These characteristics are not obvious from Ronn et al. which, as acknowledged by the Examiner, is silent regarding absorbency.

A review is requested on this basis prior to the filing of an appeal brief.